

AMENDED IN SENATE APRIL 7, 2014

SENATE BILL

No. 1317

Introduced by Senator Huff

February 21, 2014

An act to ~~amend Section 44949 of the Education Code, relating to school employees;~~ add Sections 47604.1 and 47604.2 to the Education Code, relating to charter schools.

LEGISLATIVE COUNSEL'S DIGEST

SB 1317, as amended, Huff. ~~School employees; layoff notices.~~ Charter schools.

(1) *The Ralph M. Brown Act requires that all meetings of a legislative body, as defined, of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. The Bagley-Keene Open Meeting Act requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend.*

This bill, with respect to the operation of the charter school only, would clarify that the governing body of a charter school is subject to the Ralph M. Brown Act, unless it is operated by an entity governed by the Bagley-Keene Open Meeting Act, in which case the charter school would be subject to the Bagley-Keene Open Meeting Act.

(2) *The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless the records are exempt from disclosure.*

This bill, with respect to the operation of the charter school only, would clarify that the governing body of a charter school is subject to the California Public Records Act.

(3) Existing law prohibits certain public officials, including, but not limited to, members of governing boards of school districts and citizens' oversight committees, from engaging in specified activities that are inconsistent or incompatible with, or inimical to, their duties as public officials, including, but not limited to, entering into a contract in which the official or the official's family member has a financial interest, as specified.

This bill, with respect to the operation of the charter school only, would clarify that the governing body of a charter school is subject to these provisions unless the charter school is operated as, or operated by, a nonprofit public benefit corporation.

(4) Existing law also prohibits certain self-dealing transactions, as defined, in which a nonprofit public benefit corporation is a party and in which one or more of its directors has a material financial interest, as specified.

This bill would, notwithstanding the self-dealing provision described above for nonprofit public benefit corporations, impose certain requirements on the governing body of a charter school and a member of the governing body of a charter school if the charter school and the member enter into a loan agreement, real property lease agreement, or a guarantor agreement for a line of credit or real property lease, as specified.

(5) The Political Reform Act of 1974 requires every state agency and local governmental agency to adopt a conflict-of-interest code, formulated at the most decentralized level possible, that requires designated employees of the agency to file statements of economic interest disclosing any investments, business positions, interests in real property, or sources of income that may foreseeably be affected materially by any governmental decision made or participated in by the designated employee by virtue of his or her position.

This bill, with respect to the operation of the charter school only, would clarify that the governing body of a charter school is subject to the Political Reform Act of 1974.

(6) This bill would state various exceptions and clarifications regarding the applicability of the acts described above in paragraphs (1) to (3), inclusive, and (5).

(7) Existing law requires a member of the governing board of a school district to abstain from voting on personnel matters that uniquely affect a relative of the member.

This bill would require a member of the governing body of a charter school to abstain from voting on, or influencing or attempting to influence another member of the governing body of the charter school regarding, personnel matters that uniquely affect a relative, as defined, of the member but would authorize the member to vote on collective bargaining agreements and personnel matters that affect a class of employees to which the relative belongs. The bill would prohibit a person who is disqualified from holding a civil office from serving on the governing body of a charter school.

(8) This bill would make the above provisions operative on July 1, 2015.

(9) The California Constitution requires the state to reimburse local governments for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. Existing law authorizes the governing board of a school district or a county board of education, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, to request the State Board of Education to waive all or part of any section of the Education Code or any regulation adopted by the state board that implements a provision of that code that may be waived, except as provided.

This bill would provide, for purposes of those provisions, that a charter school is considered a local government or school district, as applicable.

~~Existing law requires that, when a reduction in the number of certificated employees employed by a district is authorized for specified reasons, the notice of termination of the services of an employee in the subsequent school year be given to the employee before May 15. Existing law further requires the superintendent of the district to give written notice, no later than March 15, to the governing board of the district and the employee that it has been recommended that the notice of termination described above be given to the employee.~~

~~This bill would make nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 47604.1 is added to the Education Code,
2 to read:

1 47604.1. (a) *Subject to the limitations of this subdivision and*
2 *with respect to the operation of a charter school only, the*
3 *governing body of a charter school is subject to all of the following:*

4 (1) *The Ralph M. Brown Act (Chapter 9 (commencing with*
5 *Section 54950) of Part 1 of Division 2 of Title 5 of the Government*
6 *Code), except that a charter school operated by an entity governed*
7 *by the Bagley-Keene Open Meeting Act (Article 9 (commencing*
8 *with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title*
9 *2 of the Government Code) is subject to the Bagley-Keene Open*
10 *Meeting Act regardless of the authorizing entity.*

11 (2) *The California Public Records Act (Chapter 3.5*
12 *(commencing with Section 6250) of Division 7 of Title 1 of the*
13 *Government Code).*

14 (3) *Article 4 (commencing with Section 1090) of Chapter 1 of*
15 *Division 4 of Title 1 of the Government Code, unless the charter*
16 *school is operated as, or is operated by, a nonprofit public benefit*
17 *corporation pursuant to Section 47604.*

18 (4) *The Political Reform Act of 1974 (Title 9 (commencing with*
19 *Section 81000) of the Government Code). For purposes of Article*
20 *3 (commencing with Section 87300) of Chapter 7 of Title 9 of the*
21 *Government Code), a charter school shall be considered an*
22 *agency, and the Fair Political Practices Commission shall be a*
23 *charter school's code reviewing body.*

24 (b) (1) *Notwithstanding Section 5233 of the Corporations Code,*
25 *a member of the governing body of a charter school shall not*
26 *provide a loan to the charter school or sign a guarantor agreement*
27 *relative to a line of credit for the charter school unless all of the*
28 *following are satisfied:*

29 (A) *The governing body of the charter school adopts a resolution*
30 *at a public meeting declaring and describing the need for the loan*
31 *or the line of credit. In the case of a line of credit, the funds from*
32 *the line of credit shall not be accessed until the governing body of*
33 *the charter school complies with this paragraph.*

34 (B) *The governing body of the charter school discloses and*
35 *approves the loan agreement or line of credit, including the terms*
36 *of the loan or the line of credit, during a public meeting.*

37 (C) *The member of the governing body of the charter school*
38 *abstains from voting on, or influencing or attempting to influence*
39 *another member of the governing body regarding, all matters*
40 *affecting the loan agreement or the line of credit.*

1 (2) *Notwithstanding Section 5233 of the Corporations Code, a*
2 *member of the governing body of a charter school shall not lease*
3 *real property or sign a guarantor agreement relative to a lease of*
4 *real property to be occupied by a charter school unless both of*
5 *the following are satisfied:*

6 (A) *The governing body of the charter school discloses and*
7 *approves the real property lease agreement, including the terms*
8 *of the lease and the guaranty, if applicable, during a public*
9 *meeting.*

10 (B) *The member of the governing body of the charter school*
11 *who is a lessor or guarantor of the real property to be occupied*
12 *by the charter school abstains from voting on, or influencing or*
13 *attempting to influence another member of the governing body of*
14 *the charter school regarding, all matters affecting the real property*
15 *lease agreement.*

16 (3) *A violation of this subdivision shall constitute grounds for*
17 *charter revocation pursuant to subparagraph (D) of paragraph*
18 *(1) of subdivision (c) of Section 47607.*

19 (c) *A member of the governing body of a charter school shall*
20 *abstain from voting on, or influencing or attempting to influence*
21 *another member of the governing body of the charter school*
22 *regarding, personnel matters that uniquely affect a relative of the*
23 *member but may vote on collective bargaining agreements and*
24 *personnel matters that affect a class of employees to which the*
25 *relative belongs. For purposes of this section, “relative” means*
26 *an adult who is related to the person by blood or affinity within*
27 *the third degree, as determined by the common law, or an*
28 *individual in an adoptive relationship within the third degree.*

29 (d) *A person who is disqualified by the California Constitution*
30 *or laws of the state from holding a civil office shall not serve on*
31 *the governing body of a charter school.*

32 (e) *To the extent that the governing body of a charter school*
33 *engages in activities that are not related to the operation of the*
34 *charter school, this section does not make those unrelated activities*
35 *subject to Section 1090 of the Government Code, the Ralph M.*
36 *Brown Act, the Bagley-Keene Open Meeting Act, or the California*
37 *Public Records Act. A meeting of the governing body of a charter*
38 *school to discuss items related to the operation of the charter*
39 *school shall not include discussion of any item regarding an*

1 activity of the governing body of the charter school that is not
2 related to the operation of the charter school.

3 (f) Notwithstanding the requirements of the Ralph M. Brown
4 Act or the Bagley-Keene Open Meeting Act, the governing body
5 of a charter school may meet within the physical boundaries of
6 the state if all of the following are satisfied:

7 (1) Proper notices pursuant to the Ralph M. Brown Act or the
8 Bagley-Keene Open Meeting Act are posted at all charter school
9 facilities.

10 (2) A teleconference location is available in at least one charter
11 school facility within the physical boundaries of each county in
12 which any of the charter school's facilities are located.

13 (3) The meeting location complies with the open, public, and
14 accessibility requirements of the Ralph M. Brown Act or the
15 Bagley-Keene Open Meeting Act. A charter school may also meet
16 in a county contiguous to the county where one or more of the
17 charter school's facilities are located if at least 10 percent of the
18 pupils who are enrolled in the charter school reside in that
19 contiguous county. A nonclassroom-based charter school that does
20 not have a facility may meet within the boundaries of the county
21 in which the greatest number of pupils who are enrolled in the
22 charter school reside. This subdivision shall not limit the authority
23 of the governing body of the charter school to meet outside these
24 boundaries to the extent authorized by Section 54954 of the
25 Government Code, provided that the meeting place is in compliance
26 with Section 54961 of the Government Code.

27 (g) Neither the Ralph M. Brown Act nor the Bagley-Keene Open
28 Meeting Act shall apply to committees of the charter school, unless
29 the committee is comprised of a majority of the members of the
30 governing body of the charter school.

31 (h) The governing body of a charter school may hold closed
32 sessions to consider a matter regarding pupil discipline as
33 described in Section 48912.

34 (i) A statement of economic interest that is filed by a designated
35 person at a charter school after the required deadline pursuant to
36 the Political Reform Act of 1974 shall not be the sole basis for
37 revocation of a charter pursuant to Section 47607.

38 (j) Notwithstanding Section 6253 of the Government Code, a
39 charter school, upon a request for a copy of records, shall, within
40 20 days from receipt of the request, determine whether the request,

1 *in whole or in part, seeks copies of disclosable public records in*
2 *possession of the charter school and shall promptly notify the*
3 *person making the request of the determination and the reasons*
4 *for the determination.*

5 *(k) Notwithstanding Sections 6253 and 6253.9 of the*
6 *Government Code, a charter school may require payment of actual*
7 *costs from the person making the request before producing the*
8 *records.*

9 *(l) The governing board of a school district, county board of*
10 *education, or state board shall not impose on a charter school any*
11 *requirements that are inconsistent with, or in addition to, the*
12 *provisions of this section.*

13 *(m) Notwithstanding any other law, this section shall not apply*
14 *to actions taken before the operative date of this section.*

15 *(n) This section shall become operative on July 1, 2015.*

16 *SEC. 2. Section 47604.2 is added to the Education Code, to*
17 *read:*

18 *47604.2. (a) For purposes of Section 6 of Article XIII B of the*
19 *California Constitution, a charter school shall be considered a*
20 *local government.*

21 *(b) For purposes of Article 1 (commencing with Section 17550)*
22 *of Chapter 4 of Part 7 of Division 4 of Title 2 of the Government*
23 *Code, a charter school shall be considered a school district.*

24 *(c) For purposes of Section 33050, a charter school shall be*
25 *considered a school district.*

26 ~~SECTION 1. Section 44949 of the Education Code is amended~~
27 ~~to read:~~

28 ~~44949. (a) (1) No later than March 15 and before an employee~~
29 ~~is given notice by the governing board that his or her services will~~
30 ~~not be required for the ensuing year for the reasons specified in~~
31 ~~Section 44955, the governing board and the employee shall be~~
32 ~~given written notice by the superintendent of the district or his or~~
33 ~~her designee, or in the case of a school district that has no~~
34 ~~superintendent by the clerk or secretary of the governing board,~~
35 ~~that it has been recommended that the notice be given to the~~
36 ~~employee, and stating the reasons for the notice.~~

37 ~~(2) Until the employee has requested a hearing as provided in~~
38 ~~subdivision (b) or has waived his or her right to a hearing, the~~
39 ~~notice and the reasons for the notice shall be confidential and shall~~
40 ~~not be divulged by any person, except as may be necessary in the~~

1 performance of duties. However, a violation of this requirement
2 of confidentiality, in and of itself, shall not in any manner be
3 construed as affecting the validity of any hearing conducted
4 pursuant to this section.

5 (b) The employee may request a hearing to determine if there
6 is cause for not reemploying him or her for the ensuing year. A
7 request for a hearing shall be in writing and shall be delivered to
8 the person who sent the notice pursuant to subdivision (a), on or
9 before a date specified in that subdivision, which shall not be less
10 than seven days after the date on which the notice is served upon
11 the employee. If an employee fails to request a hearing on or before
12 the date specified, his or her failure to do so shall constitute his or
13 her waiver of his or her right to a hearing. The notice provided for
14 in subdivision (a) shall advise the employee of the provisions of
15 this subdivision.

16 (c) If a hearing is requested by the employee, the proceeding
17 shall be conducted and a decision made in accordance with Chapter
18 5 (commencing with Section 11500) of Part 1 of Division 3 of
19 Title 2 of the Government Code and the governing board shall
20 have all the power granted to an agency in that chapter, except that
21 all of the following shall apply:

22 (1) The respondent shall file his or her notice of participation;
23 if any, within five days after service upon him or her of the District
24 Statement of Reduction in Force and he or she shall be notified of
25 this five-day period for filing in the District Statement of Reduction
26 in Force.

27 (2) The discovery authorized by Section 11507.6 of the
28 Government Code shall be available only if request is made
29 therefor within 15 days after service of the District Statement of
30 Reduction in Force, and the notice required by Section 11505 of
31 the Government Code shall so indicate.

32 (3) The hearing shall be conducted by an administrative law
33 judge who shall prepare a proposed decision, containing findings
34 of fact and a determination as to whether the charges sustained by
35 the evidence are related to the welfare of the schools and the pupils
36 of the schools. The proposed decision shall be prepared for the
37 governing board and shall contain a determination as to the
38 sufficiency of the cause and a recommendation as to disposition.
39 However, the governing board shall make the final determination
40 as to the sufficiency of the cause and disposition. None of the

1 findings, recommendations, or determinations contained in the
2 proposed decision prepared by the administrative law judge shall
3 be binding on the governing board. Nonsubstantive procedural
4 errors committed by the school district or governing board of the
5 school district shall not constitute cause for dismissing the charges
6 unless the errors are prejudicial errors. Copies of the proposed
7 decision shall be submitted to the governing board and to the
8 employee on or before May 7 of the year in which the proceeding
9 is commenced. All expenses of the hearing, including the cost of
10 the administrative law judge, shall be paid by the governing board
11 from the district funds.

12 (d) Any notice or request shall be deemed sufficient when it is
13 delivered in person to the employee to whom it is directed, or when
14 it is deposited in the United States registered mail, postage prepaid
15 and addressed to the last known address of the employee.

16 (e) If after a request for hearing pursuant to subdivision (b) a
17 continuance is granted pursuant to Section 11524 of the
18 Government Code, the dates prescribed in subdivision (c) that
19 occur on or after the date of granting the continuance and the date
20 prescribed in subdivision (c) of Section 44955 that occurs after
21 the date of granting the continuance shall be extended for a period
22 of time equal to the continuance.

23 (f) The governing board may adopt from time to time rules and
24 procedures not inconsistent with this section as may be necessary
25 to effectuate this section.